

Socio-anthropological Opinion in HCJ 3066/20, HCJ 3067/20, HCJ 3068/20, HCJ 3070/20, HCJ 3071/20, HCJ 5133/20 and HCJ 5816/20

Submitted by: Dr. Ramez Eid, lecturer in the field of social anthropology and law in the Open University, Raanana, Israel.

I, the undersigned, Dr. Ramez Eid, was requested by Advocate Tehila Meir to give my professional opinion on the socio-economic and agricultural structure of the Arab Palestinian society in the West Bank in HCJ 3066/20, HCJ 3067/20, HCJ 3068/20, HCJ 3070/20, HCJ 3071/20, HCJ 5133/20 and HCJ 5816/20.

I give my professional opinion below *in lieu* of testimony in court and I hereby declare that I am well aware of the fact that for the purposes of the penal law concerning perjury in court, my opinion below signed by me is deemed as testimony under oath given by me in court.

Education and professional experience

Expert in the field of economic-environmental anthropology and human-environment-state relationships in the Arab Palestinian society.

2015 – Ph.D. in Social Anthropology (*magna cum laude*), Sociology and Anthropology Department, Bern University, Switzerland.

2004 – Master's Degree in Social Anthropology, Sociology and Anthropology Department, Texas University, Arlington, USA.

2000 – LLB. Law School, Hebrew University, Jerusalem.

2018-2021 – lecturer, Social Anthropology and Law in the Open University, Raanana, Israel.

2018-2019 – lecturer, Israel Studies Department, Kinneret Academic College.

2014-2019 – lecturer – Sakhnin Academic College.

The following is a partial list of my articles and studies in the relevant field to this opinion:

1. Haller, T., Eid, R., Gambon, H. and Lätsch, A. 2020. Empowerment Identities as a Basis of Creativity in Conservation? Constitutional Conditions for Bottom-Up Institution Building for the Management of the Commons (submitted)
2. Eid, R. (2018). Burning forests, rising power: Towards a Constitutionality process in Mount Carmel Biosphere Reserve. *Human Ecology*, 46. pp 41–50.
3. Eid, R. (2016). Constitutionality in Mallorca: The case against environmental corruption. *The Commons Digest*: 20. pp. 18-24.

4. Eid. R. (2019). Strengthening weakened voices: on Elinor Ostrom and the resurgence of the comparative environmental research in the neo-liberal age. *Megamot: Social Sciences Journal* 54(1), 209-230.
5. Eid. R. (2017). Hierarchy of duties: nature as a tool to design the attitude of the inhabitants of the Druze villages in Mount Carmel to the state. *Israeli Sociology*, 18 (2), 29-48.
6. Eid. R. (2016). The Palestinian "*Musha*" as the democratic common good: lessons from a forgotten tradition. *Jadal*: 29, 16-24 (in Arabic).

The following is a partial list of academic conferences in which I have presented my studies in the relevant field to this opinion:

- 2020 Musha as a sustainable social institution: the glocal context. Dan David Conference on the study of farmers – Tel Aviv University.
- 2019 **"Musha" in the Arab villages: Common property as an inspiration for modern sustainability.** The 21st Annual Conference for new studies of the Galilee and its surrounding area, Tel Hai Academic College.
- 2017 Discover the secret of sustainability: on the importance of multi-sites environmental studies in the neo-liberal age. The 45th Annual Conference of the Israeli - Kfar Qasim Anthropology Society. May 2017.
- 2016 **Nature and Man: Competing "scientific" narratives in the Carmel area:** the 44th Annual Conference of the Israeli – Kinneret Academic College Anthropology Society. June 2016.
- 2016 **Constitutionality in Mallorca: the case against environmental corruption.** 'Commons in a 'glocal' world: global connections and local responses' - IASC European Regional Conference, University of Bern, Switzerland – May 2016.
- 2015 **Global Capitalism and the Challenge of Well-Being in the World.** Annual Conference of the Swiss Ethnological Society, Institute of Social Anthropology, University of Bern, Switzerland- November 2015.

The Opinion

This opinion shall focus on the socio-economic agricultural structure of the Arab Palestinian society in general, and in the West Bank, in particular, and shall present its social characteristics throughout modern history to date. The opinion is based on a host of sociological and anthropological studies of the Arab Palestinian society and shall present to the honorable court a concise analysis of all aspects relating to the nexus between the Palestinian farmers and their lands and the Palestinian society's customs relating to collective cultivation of agricultural family lands.

The socio-economic structure of the traditional Palestinian society was and is still based on collective cultivation and management of the agricultural lands and public areas and spaces of the village. This structure of community and family partnership has always been a very

important social foundation which formed the fabric of social relations within the Palestinian society. The clearest manifestation of this deep and fundamental partnership is expressed in the "*Musha*/*Al-Masha'a*" institution, that ancient social custom according to the "rules" of which the members of the family and/or the community are required to help each other with the agricultural work. The following is a concise scientific review of the studies which documented and described the Palestinian *Musha* institution and its major role and importance over the last two centuries, and consequently, the importance and benefits of collective ownership within Palestinian society.

Musha is the term used by the Arab inhabitants in Israel and in many other areas in the Levant to describe different forms of collective work, all of which pertain to rights commonly owned by the members of a certain group of persons in a specific plot or plots of land. Said group usually included the family members, the inhabitants of the village or the inhabitants of the area. Usually, the *Musha* institution applied to the management of agricultural lands owned by the inhabitants of the village or the town, but it also applied to the large grazing areas or swamps and woods which surrounded the community and which were commonly owned and managed. This social institution and custom is documented in scholarly publications as an institution which existed over the last hundreds years within the Arab-Palestinian society.

One of the *Musha's* most prevalent meanings is associated with the division of equal parts of common land for the common use of the members of the group (family/extended family/village/town) through an agreed and established procedure with results which change over time. Accordingly, the members of the group customarily agree on the division of the land between them, and after a certain period of time (usually after one-two years) the initial division is revoked and the land is re-divided. Thereby, each member of the group receives the right to use part of the common land, rather than private ownership or the right for long term use of this part or another. Brigit Schaebler, who is famous for her studies of this institution, argues that this social structure fosters this process and is based on specific social principles and values such as mutual aid, co-ownership of property, and limited private ownership for the common good¹.

Hence, *Musha* is a social institution, similar to other institutions in the framework of which agricultural lands are collectively managed by the family and the community (The Commons) which were documented in numerous places around the world.

The field of anthropological research engaged with institutions for the common good like the *Musha* is a field which documents and analyses the social structure in this social environment, which is based on substantial and continuing cooperation over many years between the members of one family or community. This field yielded hundreds of studies of various traditional societies and established the fundamental principles underlying the relationships between the members of said societies. To illustrate the increased importance of the research in this field, the Nobel Prize in economic sciences was awarded in 2009 to the world renowned scholar Elinor Ostrom for her innovative work and studies in which she focused on institutions for collective management of common agricultural lands around the world and presented their

¹ Schaebler, B. 2001. Practicing *Musha*: Common lands and the common good in southern Syria under the Ottomans and the French. In Roger Owen (ed.) *New Perspectives on Property and Land in the Middle East*. Massachusetts: Harvard: Harvard Center for the Middle Eastern Studies. Pp. 241-311.

advantages and resilience opposite external violent forces.² In her numerous books and articles she proved that collective management of different properties and lands facilitates the survival of common traditions, different customs, and healthier community and family life.³ For instance, several democratic countries around the world have recognized the importance of the collective social structure in the agricultural rural areas. These countries enable such collective management and ownership institutions to continue to exist in these areas, without forcing the inhabitants to divide the land under a private-individual ownership arrangement. The most prominent example is Switzerland, in which a substantial part of the lands of the villages is managed within the *commune* and is based, like the *Musha* custom, on an ancient tradition of social principles of community collective action⁴. In Japan, the United States and Canada the collective rights of the inhabitants are also recognized.

The collective social structure in the Arab-Palestinian Society and its external challenges:

Anyone who has had the opportunity to live in a Palestinian community in the West Bank knows that most agricultural works are performed collectively with mutual aid. Agricultural work is arduous, time consuming, and extremely difficult, especially if one is required to work alone. For instance, the work involved in maintaining and harvesting olive groves is a clear social event: the family members gather and tend the trees in the different seasons of the year. This commitment is manifested in the allocation of entire days for harvesting, in which various workplaces enable their employees to take the days off and help the family. Even the Israeli Ministry of Education recognizes the collective nature of the agricultural work, and school students in the Arab society are given a concentrated vacation (for about a week in November every year) to enable the students to join their parents and extended families in the harvest of their common groves.

Anthropologists perform their research field work by living for long periods of time within the community, participating in their daily lives, while accurately documenting their customs and local social institutions. These scholars, including the undersigned, have proved beyond any reasonable doubt that the farmers, members of the Palestinian society, manage their lands collectively and they do not wish, to say the least, to split-up and act as individual farmers. Consequently, the phenomenon whereby family lands are divided in the *Tabu* [land registry] is relatively rare. To understand the socio-historical roots of this phenomenon, I shall mention a number of opinions of leading well-known experts and scholars in the field.

Firestone shows in his study that the *Musha* is the manifestation of the principles of equality within the family or the village, preventing dominant or financially established members of the

² Ostrom, Elinor. 1990. *Governing the commons: The evolution of institutions for collective action*. Cambridge university press.

³ Eid, R. (2019). Strengthening weakened voices: on Elinor Ostrom and the resurgence of the comprataive environmental research in the neo-liberal age. *Megamot: Social Sciences Journal* 54(1), 209-230.

⁴ Netting, R. M., & Netting, R. M. 1981. *Balancing on an Alp: ecological change and continuity in a Swiss mountain community*. CUP Archive. Franzen, A., Mader, S., & Bahr, S. 2019. *Governing the Commons: Why Self-Administered Farm Outlets Flourish in Switzerland*. *International Journal of the Commons*, 13(2), 1079–1091. Haller, T. et al 2021. *Balancing the Commons in Switzerland: Institutional Transformations and Sustainable Innovations*. Routledge.

group from taking over the group's entire property⁵. He uses the term: 'Land-Equalizing' while referring to these principles. The scholar Bunton is of the opinion that another important key factor in organizing the public space according to the principles of collectivity is its contribution to the process of building and strengthening trust among the members of the family and the society. In addition, collective agricultural work contributes to the improvement of the produce of these lands.⁶

A number of socio-legal studies also show that the *Musha* has already been recognized, based on the existing custom, as a legal category describing a type of ownership of common land, under the Ottoman reform **by the middle of the 19th century (the Tanzimat laws). It formed a full legal recognition of this long-standing custom. Namely, the custom of collective action and ownership preceded the reforms, and the Ottoman Empire had to recognize and incorporate it into its legal system.**⁷ Hence, the principles of collective agricultural work continued to exist in the Palestinian society, but during the British occupation of the Holy Land (the Mandate), pressures were exerted on the administration to revoke the legal recognition of the *Musha*.⁸ This is the place to mention the opinion of the scholar Amos Nadan from Tel Aviv University. According to him, the *Musha* and the practices of collective work are "efficient and dynamic economic institutions." And like in all other places around the world, the British Mandate officials failed to understand the importance of preserving the customs and practices of the collective local agricultural work (in Nadan's words: Colonial misunderstanding of an efficient peasant institution).⁹

Despite the British colonialist pressures, the practices of collective management of agricultural work continued then, and continue to exist to this day as aforesaid. Here I wish to mention Zeev Abramovich and Israel Gelfat's book "The Arab Economy in Palestine and in the Middle East" from 1944, in which they argue that the Palestinian economy in the country is an agrarian economy, that over 60% of the workers engage in agricultural work, and that it is characterized by a collective structure (pp. 10-9.) This important book mostly discusses the prevalent principles of ownership and management of land in Palestinian society throughout history, and contains information and insights that will later become important research assets. According to the authors, the Palestinian agricultural economy is primarily intended for self-consumption, with no commercial marketing purposes. They show that the *Musha* is the collective management model prevalent in these villages. Raphael Patai, The first Jewish-Zionist

⁵ Firestone, Y. 1990. The Land-Equalizing *Musha* 'Village: A Reassessment, in Gilbar, Gad G. (ed.), Ottoman Palestine, 1800–1914: Studies in Economic and Social History. Leiden: E.J. Brill. pp. 91–129.

⁶ Bunton, M. 2000. "Demarcating the British colonial state: land settlement in the Palestine Jiftlik villages of Sajad and Qazaza. "In Owen, R. et.al (ed.) New Perspectives on Property and Land in the Middle East. Massachusetts: Harvard Center for the Middle Eastern Studies.

⁷ See for instance: Inalcik, Halil, and Donald Quataert. 1994. An Economic and Social History of the Ottoman Empire, 1300-1914. Quataert.

⁸ Bunton, M. 2007. Colonial Land Policies in Palestine. NY: Oxford University Press.

⁹ Nadan, A. 2003. Colonial Misunderstanding of an Efficient Peasant Institution: Land Settlement and *Mushā* Tenure in Mandate Palestine, 1921-47. Journal of the Economic and Social History of the Orient, Vol. 46, No. 3, pp. 320-354. Nadan, A. 2006 The Palestinian peasant economy under the Mandate: A story of colonial bungling. Vol. 37. Harvard CMES.

anthropologist, also wrote about the *Musha* and the management customs and practices (based on "Co-Operation") of the agricultural lands among the Palestinian people at that time.¹⁰

In recent decades, Palestinian and Israeli researchers have continued to document the principles of mutual aid and collective agricultural work in Palestinian society. Scott Etran, from the University 'Ecole des Hautes Etudes en Science Sociales' in Paris, studied collective customs and came to conclusions explaining the reason underlying the continued existence of these customs. In his opinion, said collective work entails numerous advantages for the farmers. Etran's conclusions are also supported by Prof. Danny Rabinovich, the most prominent environmental anthropologist in Israel today, who argues in his book "**Anthropology and the Palestinians**" (page 69) that this collective social structure "allows, for instance, a calculated distribution of risk among the inhabitants of the village. In a society living in a high-risk climate environment from drought to disease, without a central government which provides security to the inhabitants, and without profitable markets for agricultural surpluses, risk distribution is quite important, perhaps even more important than maximizing the potential profit of the individual."

The anthropologist Nissrin Mazawi and Prof. Amalia Sa'ar from the University of Haifa show in their recent article that said collectivity also characterizes the work in the agricultural plots in Palestinian cities such as Nazareth. A manifestation of the above may be found in the "*Hawakir*", the family agricultural plots close to the center of the village. They describe the collective family tradition as follows:

The Hawakir are integral to households of all economic backgrounds. They serve as a space for work and socializing, constituted a center of collective (extended family) life, and provided a wide diversity of crops.¹¹

The scholar Shukri Araf, a member of the village of Mi'ilya in the Galilee, also argues in his book "The Arab Village: Structure and Use of Land " (1995) that the entire agricultural economy of the Palestinian village is based on the family structure forming the fundamental and extended unit in charge of carrying out the agricultural work. Any legal division which was imposed on the farmers harmed the agricultural work, including the collectivity of the family unit.¹² The recent article of the anthropologists Hamad and Mishori from Tel Aviv University also proves the importance of the cooperative principles in the Palestinian society. Sur Baher village is presented by them as a test case. After a long social research they argue that "There are components of socio-environmental sustainability in the village, which may be used to formulate and apply current sustainability principles. Connecting to these traditions will also make it possible to create a local approach of environmental education and sustainability in the village."¹³

In a long research I have recently conducted among Palestinian farmers, citizens of the State of Israel from the Beit Netofa Valley in the Lower Galilee (as part of a postdoctoral fellowship of

¹⁰ Patai, R. 1949. *Musha'a Tenure and Co-operation in Palestine*. American Anthropologist, Vol 51:436-445.

¹¹ Mazzawi, N., and Sa'ar, A. 2018. "The *hawākīr* of nazareth: The history and contemporary face of a cultural ecological institution." International Journal of Middle East Studies 50, no. 3 (2018): 537-556.

¹² Shukri _A, 1995. *al-Qariya al-Arabiyya: Mabna wa-Isti_malat* Arad .Jerusalem: Arab Studies Society.

¹³ Hamed and Mishori 2017. The common good and traditional ecological know-how in Tsur Baher Village: social ecological sustainability in the past as an inspiration for the future, HaNegev Studies, Ha'arava and the Dead Sea, 9(2). 69-85.

the Israeli Ministry of Science)¹⁴, it became evident that agricultural work is characterized to this day by close cooperation, which preserves the traditional dryland farming in this beautiful valley. Over the last few years I have presented these insights in several academic conferences in Israel,¹⁵ and showed that **said tradition of collective management and ownership of agricultural lands enables the preservation of that land, and prevents its division into smaller plots, which would have significantly reduced its viability, and harmed the values of the local economy and agricultural sustainability.**

My study shows, along the lines of all other social studies mentioned above, that **coerced legal division (by the registration of partial and smaller ownerships in the *Tabu*) harms the social family structure which enables effective group collaboration.** The studies of Amos Nadan from Tel Aviv University also support this argument.¹⁶

The custom whereby individuals who inherited agricultural lands in the West Bank do not take steps to separately register their names in the *Tabu*, but leave the registration of the ownership in the name of the testator, reflects the collective concept of land ownership, which is acceptable in traditional Palestinian culture. This custom is deeply rooted in the local culture and in its value system, reflecting and reinforcing the family relationships of the local inhabitants. These relationships are traditionally based on collaboration and mutual aid with respect to the agricultural lands, rather than on an individualistic and competitive concept of private property. Therefore, the registration of the names of the heirs in the *Tabu*, instead of the testator's name, who bequeathed the land to all of them, is not acceptable in this community, and is not compatible with the widespread perceptions in the Palestinian agricultural society.

It should be emphasized once again that the policy which guides the best democracies in the world today recognizes the collective rules and customs of the local inhabitants (including Switzerland, the United States, Canada and Japan) as documented by Nobel Prize winner Elinor Ostrom, and other anthropologists and sociologists.¹⁷ The anthropologist Scott Etran shows that the understanding of "ownership of land" in the Palestinian society is different in nature from the understanding of private ownership as adopted by the Turks and the English. Collective ownership forms part of the arena in which the Palestinian family operates, as an independent economic unit, and it serves both the efficiency of the collective agricultural work and the relationships within the family. The obligation to divide the land according to the principles of private ownership severely harms these families, and creates an inefficient individualistic structure. The obligation to register ownership in the *Tabu* is a violent and unjustified step, interfering with the tradition of collectivity and collaboration in Palestinian society, all contrary to global democratic principles and in violation of social rights and principles of international law.¹⁸ The international community continues to encourage the conservation and protection of cooperative customs, as a mechanism to fight destructive economies and climate changes. The nations of the world declared (through the UN Organization) 2012 as the year of cooperative institutions (such as the *Musha*).¹⁹

¹⁴ Eid, Ramez. 2018-2020. Post-Doctoral Fellowship, The Zvi Ynay Post-Doctoral Scholarship, Ministry of Science and Technology, Israel.

¹⁵ For instance: "**Musha" in the Arab villages: Common property as an inspiration for modern sustainability.** The 21st Annual Conference on New Studies of the Galilee and its surrounding area, Tel Hai Academic College.

¹⁶ Nadan, A. 2018. "Revisiting the anti-mushā' reforms in the levant: origins, scale and outcomes." British Journal of Middle Eastern Studies.

¹⁷ Bollier, D. & Graeber, D. 2016. Re-imagining Value- Insights from the Care Economy, Commons, Cyberspace and Nature. Heinrich Boll Stiftung.

¹⁸ As manifested for instance in: United Nations Declaration on the Rights of Indigenous Peoples (2007)

¹⁹ <https://social.un.org/coopsyear/>

In conclusion, many scholars in the fields of social sciences and the law in Israel and around the world, including the undersigned, support the call for legal recognition of collective agricultural land management strategies in traditional societies, including the Palestinian society, *inter alia*, due to the fact that they can contribute to the protection of humanity against global warming and prevent, for instance, deadly fires.²⁰ One of the notable books in this area in recent years, calls to protect the tradition of collective agricultural management and not to dissolve it, being one of the important human rights (choosing to co-own property with others) embracing the important principle that individuals collaborate for their common good as a collective. This is one of the fundamental principles underlying the science of ecological sustainability.²¹

Therefore, in view of that set forth above which was presented to the honorable court, **the recommendation of this opinion is not to obligate the Palestinian co-owners of lands to register their rights in the *Tabu* as a condition for cultivating their lands.**

Sincerely,

Dr. Ramez Eid
The Open University

²⁰ For instance: Kashwan, P. 2017. Democracy in the woods: Environmental conservation and social justice in India, Tanzania, and Mexico. Oxford University Press.

²¹ Weston, B., & Bollier, D. 2013. Green governance: Ecological survival, human rights, and the law of the commons. Cambridge University Press.